

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
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DEC 18 2012

PER M. S. P.
DEPUTY CLERK

MARCELINO AVILA,
Plaintiff,

v.

CORRECTIONS OFFICER EIDEM,
Defendant.

CIVIL ACTION NO. 3:12-CV-1922

(Judge Kosik)

MEMORANDUM AND ORDER

AND NOW, this 17th day of December, 2012, IT APPEARING TO THE
COURT THAT:

(1) Plaintiff, Marcelino Avila, a prisoner confined at the State Correctional Institution at Frackville, Frackville, Pennsylvania, filed the instant civil rights action pursuant to 42 U.S.C. §1983 on September 26, 2012;

(2) The action was assigned to Magistrate Judge Thomas M. Blewitt for Report and Recommendation;

(3) On November 27, 2012, the Magistrate Judge issued a Report and Recommendation (Doc. 13) wherein he recommended that Plaintiff's case be dismissed without prejudice, in accordance with Rule 41(b), on the basis of Plaintiff's failure to comply with a court Order, and failure to prosecute his action by filing an Amended Complaint;

(4) Specifically, the Magistrate Judge discusses the history of this case wherein this court adopted an earlier Report and Recommendation dismissing Plaintiff's complaint without prejudice, but allowing Plaintiff to file an Amended Complaint and advising Plaintiff that failure to file a timely Amended Complaint could result in dismissal of this action (Doc. 11);

(5) Plaintiff has failed to file timely objections to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(6) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C.A. §636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

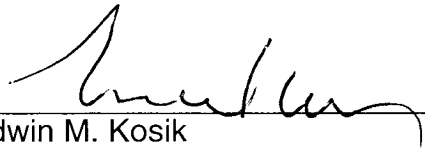
(7) We have considered the Magistrate Judge's Report and we concur with his recommendation;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated November 27, 2012 (Doc. 13) is **ADOPTED**;

(2) The above-captioned action is **DISMISSED** without prejudice; and

(3) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge.


Edwin M. Kosik
United States District Judge